

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6874 OF 2006.

Gunjan Adukia/Agarwal. ... Petitioner.
Versus.
Santosh Adukia and another. ... Respondents.

Mrs.Jyoti S.Pawar for the Petitioner.

Respondent No.1 in person.

CORAM : ABHAY S.OKA, J.

DATED : 27th April, 2007.

P.C.:

1. Heard the learned Advocate for the Petitioner. By this writ petition under Article 227 of the Constitution of India, the Petitioner has challenged the order dated 1st June 2006 passed by the learned Judge of the Family Court at Mumbai by which an application for condonation of delay made by the Petitioner has been rejected. In a petition filed by the Respondent, the Family Court at Mumbai passed a decree declaring the marriage between the Petitioner and Respondent No.1 as nullity under section 12(1)(c) of the Hindu Marriage Act, 1955. An application was made for setting aside the exparte decree in which there was a delay. By the impugned order, the prayer for condonation of delay has been rejected as a result of which the Application for setting aside the exparte decree passed by the Family Court stands dismissed.

2. Under section 19(1) of the Family Court Act, 1984 an appeal lies from very judgment and order, not

being an interlocutory order of a family Court to this Court both on facts and on law. Only in case of a decree or order passed by the Family Court upon consent of parties or under Chapter IX of the Code of Criminal Procedure, 1973 an appeal is not maintainable. The learned Counsel for the Petitioner concedes that remedy of preferring an appeal under section 19(1) of the said Act of 1984 is available to the Petitioner. Reliance is placed on certain decisions of the Apex Court and this Court for contending that notwithstanding the availability of the remedy of a statutory Appeal, this Court can exercise jurisdiction under Article 227 of the Constitution of India.

3. In the present case, admittedly a remedy of preferring a statutory appeal both on facts and law is available to the Petitioner. In view of the law laid down by the Supreme Court in the case of *Sadhana Lodh v/s. National Insurance Co.Ltd.* [(2003) 3 S.C.C. 524] and in particular paragraph 6 of the said decision, the writ petition is not entertained in view of the availability of the statutory remedy of an appeal. Only on this ground the writ petition is rejected by keeping the remedy of the Petitioner of preferring a Family Court Appeal open. All contentions of the parties on merits of the case is expressly kept open.

Judge.